

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHARLES BLAND

Claimant

VS.

CITY OF TOPEKA

Respondent,
Self-Insured

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Docket No. 1,007,272

ORDER

Respondent appealed the March 3, 2003 Order Referring Claimant for Independent Medical Evaluation and the March 3, 2003 Order for Compensation entered by Administrative Law Judge Brad E. Avery.

ISSUES

This is a claim for an August 2002 shoulder injury. Claimant also alleges that the accidental injury aggravated preexisting post-traumatic stress disorder.

In the March 3, 2003 orders, Judge Avery ordered respondent to pay claimant temporary total disability benefits and further ordered an independent medical evaluation to determine if claimant's preexisting post-traumatic stress disorder had been aggravated by his shoulder injury.

Respondent contends the Judge lacked jurisdiction to award temporary total disability benefits to claimant for his shoulder injury as light duty was available. Respondent also argues that the Judge did not have the authority to request an independent medical evaluation from Dr. James Eyman to address claimant's psychiatric condition. Respondent argues there is no statutory authority for a judge to order an evaluation to determine if a work-related accident caused or aggravated a psychological injury. Accordingly, respondent asks the Board to reverse both of the March 3, 2003 orders.

Conversely, claimant argues that respondent has failed to raise issues that the Board has the authority to review from a preliminary hearing order. Consequently, claimant asks the Board to dismiss this appeal.

The issues before the Board on this appeal are:

- (1) Does the Board have the authority to review a preliminary hearing finding whether work-related injuries render an employee unable to work and, thus, entitled to receive temporary total disability benefits?
- (2) Did the Judge err by ordering an independent medical evaluation to determine whether a work-related accidental injury aggravated or accelerated a preexisting psychological condition?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

The issues raised by respondent in this appeal are not subject to review from a preliminary hearing order. Accordingly, this appeal should be dismissed.

This is an appeal from two preliminary hearing orders. Therefore, the Board's jurisdiction to review preliminary hearing findings is limited. At this stage of the claim, not every alleged error is subject to review. Generally, the Board can review preliminary hearing orders in which an administrative law judge has exceeded his or her jurisdiction.¹ Moreover, the Board has specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are:

- (1) did the worker sustain an accidental injury,
- (2) did the injury arise out of and in the course of employment,
- (3) did the worker provide the employer with timely notice and with timely written claim, and
- (4) do certain other defenses apply.

The term "certain defenses" refers to disputes regarding the compensability of the accident or injury under the Workers Compensation Act.²

Whether a worker's psychological condition was aggravated by a work-related accident and whether the worker satisfies the definition of being temporarily and totally disabled are not jurisdictional issues listed in K.S.A. 44-534a that are subject to review from a preliminary hearing order. Those issues do, however, comprise questions of law

¹ K.S.A. 2002 Supp. 44-551(b)(2)(A).

² *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

and fact over which an administrative law judge has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

Likewise, a judge has the power and authority to request an independent medical evaluation to obtain pertinent information for determining the issues in a claim. Accordingly, the Judge did not exceed his jurisdiction in requesting the independent medical evaluation from Dr. James Eyman. Therefore, the propriety of that order is not subject to review at this stage of the claim.

Finally, the Board is compelled to comment on the several hundred pages of exhibits that were introduced at the preliminary hearing. For future reference, the Board requests the parties to exercise discretion in selecting documents that are offered into evidence. Ideally, only those documents that have some significance or particular relevance to an issue in controversy should be placed into the record.

As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.⁴

WHEREFORE, the Board dismisses respondent's appeal.

IT IS SO ORDERED.

Dated this ____ day of May 2003.

BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
Larry G. Karns, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Director, Division of Workers Compensation

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

⁴ K.S.A. 44-534a.